IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 33006 of 2006(D)

PETITIONER:

V.N.AJAYAN, S/O.LATE V.S.NATESAN ACHARY,
BHAGYALAKSHMI JEWELLERY, T.B.ROAD,
KOTTAYAM.

BY ADV. SRI.ARIKKAT VIJAYAN MENON

RESPONDENTS:
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1. SALES TAX OFFICER,
SECOND CIRCLE, KOTTAYAM.

2. DEPUTY COMMISSIONER OF COMMERCIAL
TAXES (APPEALS), KOLLAM.

BY GOVERNMENT PLEADER SRI.JULIAN XAVIER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

W.P.(C) NO.33006 OF 2006

Dated this the 15th day of December, 2006

J U D G M E N T

The petitioner challenges Exhibit P4 order passed by the 1st respondent. Exhibit P4 is the order passed against interim application filed by the petitioner in appeal filed against the assessment order. The contention of the petitioner is that he is the son of late Sri. Natesan Achari and Natesan Achari was engaged in the running of one gold jewellery and one silver jewellery. Due to old age, petitioner's father sold the gold jewellery as he was not able to manage the same in favour of his son Sri.V.N.Rajeev, for a consideration of Rs.25,00,000/-. Exhibit P1 is a copy of the agreement dated 01/04/2003. Thereafter Sri.Rajeev was running the jewellery business at K.K.Road, Kottayam. Subsequently, petitioner's father died. The assessment was later taken up by the 1st respondent and by order dated 25/01/2006, the assessment was completed raising a demand of Rs.90,367/- towards tax and interest Rs.27,110/-. Exhibit P2 is the order produced in the case. It is against that order petitioner filed an appeal in his capacity as legal heir of Natesan Achari.

2. It is the specific contention of the petitioner that while determining taxable turnover all amounts realised by the dealer by the sale of business as a whole is entitled to be deducted. Reliance was placed on Rule 9(g) of the Kerala Sales Tax Rules. Petitioner also placed reliance on the Full Bench decision of this court in **Deputy Commissioner of Sales Tax v. Dat Pathe [(1985) 59 STC 374]** wherein similar issue was considered and the claim for exemption under Rule 9(g) was held as entitled.

3. The appellate authority while passing the impugned order Exhibit P4, even after being satisfied with the prima facie case, imposed a condition to pay 50% of the balance amount for granting a stay for recovery of the balance. According to the petitioner, the order is passed in a mechanical way. If only the statutory entitlement for deduction under Rule 9(g) is allowed in this case, it is contended that no tax is due. Petitioner during the course also produced Exhibit P7, which is the return filed by the son named Rajeev for the year 2003-04 to show that the goods were purchased by him which is also shown in the return. In Exhibit P5, which is produced to show the details of the stock of

gold, it clearly shows that the transfer is from Bhagya Lakshmi Jewellery to V.S.Natesan Achary. Therefore, once it is found that the jewellery was purchased by son Rajeev and he has also shown the said gold purchased by him in the stock register and in view of Rule 9(g), contention of the petitioner that while determining the taxable turn over, the assessee is entitled for deduction of such transferred gold, prima facie satisfies a strong case in the appeal and if finally accepted, there will not be any liability also. However, these additional documents were also not placed before the appellate authority at the time of passing orders.

4. In the light of the Full Bench decision of this court and in the light of the specific rule contained in Rule 9(g) and after considering the additional documents produced, I am satisfied that the order passed by the appellate authority is vitiated on being passed in a mechanical way.

5. Accordingly, the same is set aside. The appellate authority shall reconsider the matter and pass fresh orders. Petitioner shall produce additional documents produced in this case before the appellate authority. The appellate authority shall

accordingly pass order after hearing the petitioner within a period of one month. Till such time, further recovery pursuant to the assessment order as against the petitioner will stand stayed.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp